

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LAWRENCE WATKINS,)	
)	
Plaintiff,)	4:05cv3094
)	
vs.)	MEMORANDUM AND ORDER
)	
JO ANN KINNEY, et al.,)	
)	
Defendants.)	

This matter is before the court on filing no. 53, a letter in which the plaintiff, Lawrence Watkins, a prisoner, asks to reopen the above-entitled case and requests information. Mr. Watkins brought this civil rights action pursuant to 42 U.S.C. §1983, in the belief that, because of racial discrimination, the defendants (prison officials) had refused to permit the plaintiff to visit his dying son in the hospital.

However, after the defendants filed a Motion for Summary Judgment (filing no. 41), the court ordered the plaintiff to respond to the defendants' summary judgment motion by no later than March 14, 2006 (filing no. 48), by filing a brief and any available evidentiary support for the claims asserted by the plaintiff in his complaint. The court warned the plaintiff that, in the absence of a timely response, this action would be subject, without further notice, to dismissal, without prejudice, as abandoned and for lack of prosecution. See NECivR 41.1, which states in pertinent part: "At any time when it appears that any action is not being prosecuted with reasonable diligence the court may dismiss it for lack of prosecution."

The plaintiff did not comply with filing no. 48 and never did respond to the summary judgment motion. After the deadline expired, the court waited until March 22, 2006, in case of delayed mail, and then dismissed the case as abandoned and for lack of prosecution (filing no. 51). Once a case has been dismissed, and the thirty-day time limit for appeal has expired, the case cannot be reopened in the absence of any error by the court. Here

no error is apparent.

IT IS THEREFORE ORDERED:

1. That filing no. 53, the plaintiff's Motion to Reopen this case, is denied; and
2. That the Clerk of Court shall send the plaintiff, without cost, a copy of filing nos. 42, 48 and 51.

October 31, 2006.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge